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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,698	09/12/2003	Julia Sarah Faircloth	PILOOI	7371

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,698

Applicant(s)

FAIRCLOTH ET AL.

Examiner

Fredrick C Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11,14-19,23-34 and 36 is/are rejected.
- 7) ☒ Claim(s) 12,13 and 20-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,824,059 to Butler.

Claim 23, Butler discloses an article for removeably receiving an item 14, comprising:

a first surface having an outer perimeter;

a second surface connected to said first surface at said outer perimeter;

a cushioning medium, said cushioning medium located between said first surface and said second surface;

a first cavity (16b), said first cavity being a three dimensional void encircled by said cushioning medium and being generally encircled by said first surface, said first surface including a front surface, a first cavity sidewall perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter surface and said first cavity floor surface generally defining said three dimensional void, said first cavity sidewall perimeter surface billowing toward said three dimensional void for snugly holding yet removeably receiving the item, an opening to said first cavity being encircled by said front surface; and,

a first door 50, said first door connected to said first surface and openable to

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an open position and closeable to a closed position, said first door overlaying said first cavity in said closed position. With regards to the Applicant's recitation "said first cavity side wall perimeter surface billowing toward said three dimensional void, as least when said void is empty" the cavity 16b of Butler would inherently billow/swell toward the three dimensional void when the void is empty since the article is constructed from a resilient stretchable elastomeric block that stretches in order to accommodate an item in the cavity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 9-11, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,038,719 to Castagna.

Claim 1, Castagna discloses an assembly with at least one item, comprising:

a cushioning member 11, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity 18, said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening, a first cavity sidewall

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perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning member (col. 4 lines 6-15);

at least one item 20 removeably situated in said first cavity;

a first door 22 connected to said front surface, and said first door openable to an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first

cavity and said at least one item situated in said first cavity; and wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme (col. 2 lines 45-48).

Castagna discloses the cavity comprising extra material that contains stuffing within the pillow but fails to disclose the cavity sidewall perimeter surface billowing inward toward said cavity. It would have been obvious for one having ordinary skill in the art to form the cavity wherein the sidewall surface billows inward through the use of the extra material and stuffing in order to further conceal and retain the phallic member within the cavity.

Claim 2, wherein said at least one item includes a stuffed toy (col. 5 lines 1-3).

Claim 9, further including a securing means (col. 4 lines 38-48) for securing said first door in said closed position, and wherein said first door is pivotally connected to said front surface.

Claim 10, further comprising a second door 24 connected to the cushioning member (col. 4 lines 44-45).

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Claim 11, wherein said first door 22 and said second door 24 conceal said first cavity when said first door and second door are in the closed position.

Claim 15, wherein said cushioning member includes an outer perimeter surface, said outer perimeter surface connected to an outer perimeter of said first surface and connected to said second surface, said outer perimeter surface providing depth to said cushioning member.

Claim 16, further comprising a second cavity (fig. 14-15), said second cavity inherently having a second cavity perimeter sidewall surface which generally encircles a three dimensional void of said second cavity, said second cavity generally encircled by said cushioning medium.

Claim 17, wherein said second cavity is in said outer perimeter surface and extending in an inward direction between said front surface and said back surface.

Claim 18, Castagna discloses all of the Applicant's claimed limitations except for having a second door. It would have been obvious to one having ordinary skill in the art at the time of the invention to connect a second door to the cushion in order to selectively access items stored in the second cavity.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,038,719 to Castagna in view of U.S. Pat. No. 5,819,346 to Lane.

Regarding claim 4, Castagna discloses all of the Applicant's claimed limitations except for having a sound device. Land discloses a sound device for a cushioned member (col. 2 lines 20-21). It would have been obvious to one having ordinary skill in the art at the time of the invention to connect a sound device to the cushion in order for the user to select their own music.

Claims 1-2, 5-8, 14-15, 19, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,824,059 to Butler in view of U.S. Pat. No. 4,768,245 to Dutton.

Claim 1, Butler discloses an assembly with at least one item, comprising:

a cushioning member 12, said cushioning member including a cushioning medium, a front surface and a back surface, said front surface and said back surface being connected along an outer perimeter of said cushioning member, said cushioning medium being between said front surface and said back surface;

a first cavity (16b), said first cavity recessed from said front surface into said cushioning member, said first cavity having a first cavity opening, a first cavity sidewall perimeter surface and a first cavity floor surface, said first cavity sidewall perimeter surface connected to said first cavity floor surface, and said first cavity sidewall perimeter surface encircled by said cushioning member;

at least one item 14 removeably situated in said first cavity;

a first door 50 connected to said front surface, and said first door openable to

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an open position for revealing at least a portion of said first cavity and closeable to a closed position over said first cavity for concealing said at least a portion of said first cavity and said at least one item situated in said first cavity. Butler fails to disclose indicia on the first door. Dutton discloses a cushion member having indicia on the outer surface (col. 2 lines 57-66). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ indicia as taught by Dutton on the outer surface of the door of Butler in order to provide a means to relate to the remote control devices stored therein. With regards to the Applicant's recitation "said first cavity side wall perimeter surface billows inward toward said cavity" the cavity 16b of Butler would inherently billow/swell toward the three dimensional void when the void is empty since the article is constructed from a resilient stretchable elastomeric block that stretches in order to accommodate an item in the cavity (col. 2 lines 35-43).

Claim 2, Butler discloses all of the Applicant's claimed limitations except for the item including a stuffed toy. It is well known that for a child to play with stuffed toys while in the bed and it would have been obvious for a child to place a stuffed toy within the pocket of the pillow in order to store the toy.

Claim 5, wherein said first cavity opening has a circumference and where said first door has a larger circumference than said first cavity opening circumference so to overlay a portion of said front surface (fig. 5)(Butler).

Claim 6, wherein said outer perimeter of said cushioning member has a generally rectangular outline, said outline encircling a cushioning member frontal area, said first

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cavity opening encircling an opening area, and where said opening area is at least 18% of the size of said cushioning member frontal area (fig. 5)(Butler).

Claim 7, wherein said cushioning member includes a shell, said shell housing said cushioning medium, and said shell comprising quilted fabric material (fig. 1-3)(Dutton).

Claim 8, wherein said first cavity floor surface is attached proximate to said back surface for preventing said first cavity sidewall perimeter surface and said first cavity floor surface from turning inside out (fig. 3)(Butler).

Claim 14, wherein said outer perimeter of said cushioning member has an outline that is shaped to further visually indicate said illustrated theme (Butler).

Claim 15, wherein said cushioning member includes an outer perimeter surface, said outer perimeter surface connected to an outer perimeter of said first surface and connected to said second surface, said outer perimeter surface providing depth to said cushioning member (Butler).

Claim 19, further comprising a tunnel 34b, said tunnel having a tunnel opening in said first cavity sidewall perimeter surface, and said tunnel being a passageway located in between said front surface and said back surface (Butler).

Claim 24, Butler fails to disclose indicia on the first door. Dutton discloses a cushion member having indicia on the outer surface (col. 2 lines 57-66). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ indicia as taught by Dutton on the outer surface of the door of Butler in order to provide a means to relate to the remote control devices stored therein.

Claim 25-26, 28-34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,768,245 to Dutton in view of U.S. Pat. No. 4,824,059 to Butler.

Claim 25, Dutton discloses a theme pillow assembly for concealing and revealing an item comprising:

- a first layer of material 12;
- a second layer of material 14 connected to said first layer of material;
- cushioning medium between 15 said first layer and said second layer,
- a cavity having an opening, said first layer of material including a front layer,
- an item 30 removeably stationed in said cavity,
- a third layer of material 20 attached to said first layer of material, said third layer of material being a door covering at least a portion of said cavity opening

where at least one of said first layer of material and said third layer of material bear indicia which together with said item indicate a theme (fig. 1 & 3)(col. 2 lines 57-66). Dutton fails to disclose the cavity having a cavity floor layer and a sidewall perimeter layer being encircled by said cushioning medium and a third layer of material pivotally attached to open to an open position and close to a closed position. Butler discloses a cushion having a cavity 16b with a floor, a sidewall, and a layer 50 of material pivotally attached to open to an open position and close to a closed position. It would have been obvious for one having ordinary skill in the art at the time of the invention to have a cavity and layer as taught by Butler in order to store and protect equipment from vibrations, jars, and drops.

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Claim 26, Dutton discloses all of the Applicant's claimed limitations except for the item including a stuffed toy. It is well known that for a child to play with stuffed toys while in the bed and it would have been obvious for a child to place a stuffed toy within the pocket of the pillow in order to store the toy.

Claim 28, wherein said cavity opening has a circumference and where said third layer has a larger circumference than said cavity opening circumference so as to overlay a portion of said first layer of material.

Claim 29, wherein said cavity floor layer is attached to said second layer for preventing said cavity sidewall perimeter layer and said cavity floor layer from turning inside out.

Claim 30, wherein an outer perimeter of said theme pillow assembly has an outline that is shaped to further indicate said theme (fig. 3-4).

Claim 31, further comprising a outer perimeter layer of material, said outer perimeter layer of material connected to an outer perimeter of said first layer of material and an outer perimeter of said second layer of material, said outer perimeter layer of material providing depth to said theme pillow assembly.

Claim 32, further comprising a second cavity (46), said second cavity having a second cavity sidewall perimeter surface which generally encircles a three dimensional void of said second cavity, said second cavity generally encircled by said cushioning medium (Butler).

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Claim 33, further comprising a tunnel (34a), said tunnel having a tunnel opening in said cavity sidewall perimeter layer, and said tunnel being a passageway located in between said first layer and said second layer (Butler).

Claims 34 and 36, Dutton discloses a theme pillow comprising:

cushioning member 10,

a cavity having an opening,

an item 30 removeably stationed in said cavity,

a first door 20 connected to said front surface;

wherein said cushioning member includes a shell (12,14), said shell housing said cushioning medium, and said shell comprising quilted fabric material; and

wherein at least one of said cushioning member and said first door have indicia, said at least one item and said indicia together visually indicating an illustrated theme (fig. 1 & 3)(col. 2 lines 57-66). Dutton fails to disclose the cavity having a cavity floor and a sidewall perimeter layer being encircled by said cushioning medium and a first door attached to open to an open position and close to a closed position. Butler discloses a cushion having a cavity 16b with a floor, a sidewall, and a door 50 attached to open to an open position and close to a closed position. It would have been obvious for one having ordinary skill in the art at the time of the invention to have a cavity and layer as taught by Butler in order to store and protect equipment from vibrations, jars, and drops.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,824,059 to Butler in view of U.S. Pat. No. 4,768,245 to Dutton and U.S. Pat. No. 6,038,719 to Castagna.

Claim 9, Butler discloses all of the Applicant's claimed limitations except for a securing means for securing the first door. Castagna discloses a cushion member having a door 22 including a securing means (col. 4 lines 38-48). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a securing means on the first door of Butler as taught by Castagna in order to securely fix the door into the closed position.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,768,245 to Dutton, U.S. Pat. No. 4,824,059 to Butler and U.S. Pat. No. 5,819,346 to Lane.

Regarding claim 27, Dutton discloses all of the Applicant's claimed limitations except for having a sound device. Land discloses a sound device for a cushioned member (col. 2 lines 20-21). It would have been obvious to one having ordinary skill in the art at the time of the invention to connect a sound device as taught by Lane to the cushion in order for the user to select their own music.

Response to Arguments

Applicant's arguments with respect to claims 1-2 4- have been considered but are moot in view of the new ground(s) of rejection.

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Allowable Subject Matter

Claims 12-13, and 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

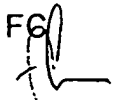
Claim 35 is allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



MICHAEL F. TRETTEL
PRIMARY EXAMINER
ART UNIT 358